

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

DONALD DOUGLAS BONE,

Plaintiff, No. 2:08-cv-2057-JFM (PC)

vs.

DIRECTOR, CALIFORNIA  
DEPARTMENT OF CORRECTIONS  
AND REHABILITATION, et al.,

Defendants. ORDER

Plaintiff, a state prisoner proceeding pro se, has filed a civil rights action pursuant to 42 U.S.C. § 1983, together with a request to proceed in forma pauperis. In light of 1996 amendments to 28 U.S.C. § 1915, this court will not rule on plaintiff's request to proceed in forma pauperis.

In addition to challenging a pending involuntary transfer to an out-of-state prison, plaintiff contends his Eighth Amendment rights are being violated by prison staff at California Men's Colony based on their failure to treat an impacted tooth he has suffered since May 2006. Plaintiff is presently incarcerated at the California Men's Colony.

The federal venue statute requires that a civil action, other than one based on diversity jurisdiction, be brought only in "(1) a judicial district where any defendant resides, if all

1 defendants reside in the same State, (2) a judicial district in which a substantial part of the events  
2 or omissions giving rise to the claim occurred, or a substantial part of property that is the subject  
3 of the action is situated, or (3) a judicial district in which any defendant may be found, if there is  
4 no district in which the action may otherwise be brought.” 28 U.S.C. § 1333(b).

5 In this case, one named defendant is located and the claims arose in San Luis  
6 Obispo, which is in the Central District of California. Therefore, plaintiff’s claim should have  
7 been filed in the United States District Court for the Central District of California. In the interest  
8 of justice, a federal court may transfer a complaint filed in the wrong district to the correct  
9 district. See 28 U.S.C. § 1406(a); Starnes v. McGuire, 512 F.2d 918, 932 (D.C. Cir. 1974).

10 Accordingly, IT IS HEREBY ORDERED that:

11 1. This court has not ruled on plaintiff’s request to proceed in forma pauperis; and  
12 2. This matter is transferred to the United States District Court for the Central  
13 District of California.

14 DATED: September 11, 2008.

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16 UNITED STATES MAGISTRATE JUDGE  
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